

TITLE FOUR – Taxation

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 CHAPTER 880
Uniform City Income Tax

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CROSS REFERENCES

Taxation generally - see CHTR. Art. VIII

Municipal income taxes - see M.C.L.A. §§141.501 et seq.

Exemptions - see M.C.L.A. §§141.632, 141.642, 141.652, 141.654, 141.655

880.01 SHORT TITLE.

This chapter shall be known and may be cited as the "Uniform City Income Tax Ordinance". (Ord. 360. Passed 12-11-93.)

880.02 RULES OF CONSTRUCTION; DEFINITIONS.

(a) Rules of Construction. As used in this chapter, the words, terms and phrases set forth in subsection (b) hereof, and their derivations, have the meanings given therein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural. "Shall" is always mandatory and not merely directory. "May" is always directory.

(b) Definitions. As used in this chapter:

- (1) "Administrator" means the official designated by the City to administer this chapter, or the duly authorized agent or representative of that official, but does not mean the Department of Treasury.
- (2) "Business" means an enterprise, activity, profession or undertaking of any nature conducted or ordinarily conducted for profit or gain by any person, including the operation of an unrelated business by a charitable, religious or educational organization.
- (3) "Capital gains" and "capital losses" mean those terms as defined for Federal income tax purposes. In addition:
 - A. "Capital gains" shall also mean gains from the sale or exchange of non-capital property where such gains are taxed as capital gains under Sec. 1231 of the Federal Internal Revenue Code.
 - B. "Capital gains" and "capital losses" shall not include any portion of such gains or losses occurring prior to the effective date of the City income tax, January 1, 1994. In determining gain or loss on property acquired prior to January 1, 1994, the fair market value as of January 1, 1994, shall be used. The fair market value shall be determined by appraisal or other reliable evidence. In the case of traded securities, the fair market value shall be the closing price of such securities on the last business day prior to January 1, 1994. The bid price shall be used if quotations are shown in this way. If no fair market value can be determined by the above means, the following method shall be used:
 1. Compute total gain or loss for Federal income tax purposes.
 2. Compute the percentage of time held since the effective date of the City income tax, January 1, 1994, to the total time the property was held.

3. Apply the percentage determined in paragraph (b)(3) B.2 hereof to the amount in paragraph (b)(3) B.1. hereof to compute the capital gain or loss taxable by the City.
- (4) "Compensation" means salary, pay or emolument given as compensation or wages for work done or services rendered, in cash or in kind, and includes but is not limited to the following: salaries, wages, bonuses, commissions, fees, tips, incentive payments, severance pay, vacation pay and sick pay.
- (5) "Corporation" means a corporation or a joint stock association organized under the laws of the United States, this state, or any other state, territory, or foreign country or dependency.
- (6) "Department" means the Department of Treasury for tax years after the 1996 tax year for which the City has entered into an agreement with the Department of Treasury pursuant to Section 9 of Chapter 1. "Department" includes a duly authorized agent or representative of the Department.
- (7) "Doing business" shall be defined as follows:
 - A. "Doing business" means the conduct of any activity with the object of gain or benefit, except that it does not include:
 1. The solicitation of orders by a person or his or her representative in the City for sales of tangible personal property, which orders are sent outside the City for approval or rejection and, if approved, are filled by shipment or delivery from a point outside the City.
 2. The solicitation of orders by a person or his or her representative in the City in the name of or for the benefit of a prospective customer of a person, if orders by the customer to such person to enable the customer to fill orders resulting from the solicitation are orders described in paragraph (b)(7)A.1. hereof.
 3. The mere storage of personal property in the City in a warehouse neither owned nor leased by the taxpayer.
 - B. A person shall not be considered to be doing business in the City, in the absence of maintaining an establishment in the City or engaging in other activity in the City, merely by engaging in one or more of the following acts:
 1. Maintenance, by a corporation, of a resident agent in the City;
 2. Installing, servicing or instructing in the use of equipment or other goods sold when performed by an employee-salesman of such person and where such activities are incidental to the employee-salesman's primary selling activities;
 3. Occasional credit investigations or collections by an employee-salesman of such person where such activities are incidental to the employee-salesman's primary selling activities:

- 4. Exhibiting goods for a short time, in leased space, at a convention, exhibition or trade show;
- C. Mere ownership of real or tangible personal property in the City which is not used in or related to business activity in the City and which does not produce gross income in the City.
- (8) "Employee" means a person from whom an employer is required to withhold for either Federal income or Federal Social Security taxes.
- (9) "Employer" means an individual, partnership, association, corporation, non-profit organization, governmental body or unit or agency, including the State, or any other entity, whether or not taxable under this chapter, that employs one or more persons on a salary, bonus, wage, commission or other basis, whether or not the employer is in a business.
- (10) "Federal Internal Revenue Code" means the Internal Revenue Code of the United States in effect on the last day of the taxpayer's tax year.
- (11) "Financial institution" means a bank, industrial bank, trust company, building and loan or savings and loan association, credit union, safety and collateral deposit company, regulated investment company as defined in Section 851 and the following sections of the Federal Internal Revenue Code, under whatever authority organized, and any other association, joint stock company or corporation at least ninety percent of whose assets consist of intangible personal property and at least ninety percent of whose gross income consists of dividends or interest or other charges resulting from the use of money or credit.
- (12) "Fiscal year" means an accounting period of twelve months ending on any day other than December 31. Only fiscal years accepted by the Internal Revenue Service for Federal Income tax purposes may be used for City tax purposes
- (13) "Net profits" means the net gain from the operation of a business, profession or enterprise, after provision for all costs and expenses incurred in the conduct thereof, determined on either a cash or accrual method. on the same basis as provided for in the Federal Internal Revenue Code for Federal income tax purposes, excluding items exempted under this chapter, but without deduction of Federal and City taxes based on income and without deduction of net operating loss carry-over or capital loss carry-over sustained prior to the effective date of this tax. However, that net operating losses and capital losses sustained after the effective date of this tax may be carried over to the same extent and on the same basis as under the Federal Internal Revenue Code, but shall not be carried back to prior years.

- A. "City taxes based on income," as used in this paragraph, shall mean the City of Ionia income tax imposed by this chapter.
 - B. Depreciation shall be computed in the same manner as under the Federal Internal Revenue Code and taken to the same extent as taken on the taxpayer's Federal return for the same taxable year. Depreciable assets acquired before the effective date of the City tax cannot be valued as of such effective date and depreciated on that basis. However, a taxpayer may take depreciation on war emergency facilities to the extent still being depreciated on its official books, on which it elected to take special amortization in lieu of depreciation under the authority of Acts of Congress for Federal income tax purposes.
- (14) "Nonresident" means an individual domiciled outside the City.
 - (15) "Person" means a natural person, partnership, fiduciary, association, corporation or other entity. When used in any provision imposing a criminal penalty, "person" as applied to an association means the parties or members thereof, and as applied to a corporation, the officers thereof.
 - (16) "Predominant place of employment" means that city imposing a tax under a uniform city income tax ordinance other than the city of residence, in which the employee estimates he will earn the greatest percentage of his compensation from the employer, which percentage is twenty-five percent or more.
 - (17) "Resident" means an individual domiciled in the City. "Domicile" means a place where a person has his or her true, fixed and permanent home and principal establishment, to which, whenever absent therefrom, he or she intends to return, and domicile continues until another permanent establishment is established. If an individual, during the taxable year, being a resident becomes a non-resident or vice versa, taxable income shall be determined separately for income in each status.
 - (18) "Taxable year" means the calendar year, or the fiscal year, used as the basis on which net profits and other income subject to tax under this chapter are to be computed, and in case of a return for a fractional part of a year, the period for which the return is required to be made.
 - (19) "Taxpayer" means a person required under this chapter to file a return or to pay a tax.

- A. Actual residence is not necessarily domicile, for domicile is the fixed place of abode which, in the intention of the individual, is permanent rather than transitory. It is the place in which an individual has voluntarily fixed his or her habitation, not for a mere special or limited purpose, but with the present intention of making a permanent home, until some unexpected event shall occur to cause him to adopt some other permanent home. Every individual has one and only one domicile. Once established it continues until a new one is established, coupled with the abandonment of the old. Prima facie, a married woman has the same domicile as her husband. Ordinarily, the domicile of a minor follows that of the father.

The Administrator may require of individuals claiming domicile outside the City of Ionia, a statement of information with respect to the particular case. Mailing address, place of voting, statements in licenses and other applications, establishment of business and social contacts, marital status and other overt acts are evidence of domicile, but no one such item is controlling

- B. If an individual is a resident during part of a taxable year and a non-resident during the remainder, he or she shall not file two returns. If he or she is required to file under this chapter, he or she shall file a resident return only, Form I-1040, reporting thereon the period of time for each status. Income which is taxable to residents, but not to non-residents (e.g. interest and dividends), shall be reported, and be subject to tax, only for the portion of the year during which he or she was a resident.
- C. Each person shall use the same taxable year for City income tax purposes as such person uses for Federal income tax purposes.
(Ord. 360. Passed 12-11-93.)

880.03 IMPOSITION OF TAX; RATES.

Subject to the exclusions, adjustments, exemptions and deductions herein provided, an annual tax of one percent on corporations and resident individuals and one-half percent on non-resident individuals for general revenue purposes and the purposes provided for in Sections 880.04 and 880.05 is hereby imposed as an excise on income earned and received on and after the effective date of this chapter. However, if the governing body of the City adopts a resolution to impose the tax at a lower rate, the tax is hereby imposed at that lower rate. If the tax is imposed at a lower rate, the rate on nonresident individuals shall not exceed one-half of the rate on corporations and resident individuals. (Ord. 360. Passed 12-11-93.)

880.04 DEDICATION AND TRANSFER OF FUNDS FOR USE OF FEDERAL FACILITY DEVELOPMENT FUND.

(a) For the 1993 tax year and each tax year after 1993, a city that is a qualified local unit of government, as defined by the Federal Facility Development Act, may adopt an ordinance or resolution, or may enter into an agreement with a qualified local unit of government other than the city, to dedicate and transfer funds in an amount determined pursuant to subsection (c) hereof, solely and to the extent necessary for the purposes authorized for use of the Federal Facility Development Fund created by the Federal Facility Development Act.

(b) When a city adopts an ordinance or resolution or enters into an agreement pursuant to subsection (a) hereof, the use or transfer of any funds dedicated or to be transferred shall commence and continue until any bonds, obligations or other evidences of indebtedness for which the funds are pledged are fully paid.

(c) The amount dedicated or to be transferred by a city each year pursuant to subsection (a) hereof shall equal the amount of withheld tax remitted by a qualified employer pursuant to Section 880.26(j), as reconciled pursuant to Section 880.26(k), for all qualified employees.

(d) As used in this section:

- (1) "Qualified employee" means a person who meets both of the following criteria:
 - A. Is employed by a qualified employer.
 - B. Whose principal workplace is a qualified facility.
 - (2) "Qualified employer" means the Federal government.
 - (3) "Qualified facility" and "qualified local unit of government" mean those terms as defined in the Federal Facility Development Act.
- (Ord. 360. Passed 12-11-93.)

880.05 DEDICATION AND TRANSFER OF FUNDS FOR USE OF FEDERAL DATA FACILITY FUND.

(a) A city that is a qualified local unit of government, as defined by the Federal Data Facility Act, may adopt an ordinance or resolution, or may enter into an agreement with a qualified local unit of government other than the city, to dedicate and transfer funds in the 1994 through 2003 tax years in an amount determined pursuant to subsection (c) hereof solely and to the extent necessary for the purposes authorized for the use of the Federal Data Facility Fund created by the Federal Data Facility Act

(b) If a city adopts an ordinance or resolution or enters into an agreement pursuant to subsection (a) hereof, the use or transfer of any funds dedicated or to be transferred shall commence and continue until any bonds, obligations, or other evidence of indebtedness for which the funds are pledged are fully paid or the authorized purpose is otherwise completed, but not after the 2003 tax year.

(c) The amount dedicated or to be transferred by a city each year pursuant to subsection (a) hereof shall equal the amount of withheld tax remitted by a qualified employer pursuant to Section 880.26(j) as reconciled pursuant to Section 880.26(k), for all qualified employees.

(d) As used in this section:

- (1) "Qualified employee" means a person who meets both of the following criteria:
 - A. Is employed by a qualified employer.
 - B. Whose principal workplace is a qualified facility.
- (2) "Qualified employer" means the Federal government.
- (3) "Qualified facility" and "qualified local unit of government" mean those terms as defined in the Federal Data Facility Act.
(Ord. 360. Passed 12-11-93.)

880.06 RESIDENT INCOME TO WHICH TAX APPLIES.

The tax shall apply on the following types of income of a resident individual to the same extent and on the same basis that the income is subject to taxation under the Federal Internal Revenue Code:

- (a) On a salary, bonus, wage, commission and other compensation.
- (b) On a distributive share of the net profits of a resident opener of an unincorporated business, profession, enterprise, undertaking or other activity, as a result of work done, services rendered and other business activities wherever conducted.
- (c) On dividends, interest, capital gains less capital losses, income from estates and trusts and net profits from rentals of real and tangible personal property.
- (d) On other income of a resident individual.
(Ord. 360. Passed 12-11-93.)

880.07 NONRESIDENT INCOME TO WHICH TAX APPLIES.

(a) The tax shall apply on the following types of income of a nonresident individual to the same extent and on the same basis that the income is subject to taxation under the Federal Internal Revenue Code.

- (1) On a salary, bonus, wage, commission and other compensation for services rendered as an employee for work done or services performed in the City. Income that a nonresident taxpayer receives as the result of disability and after exhausting all vacation pay, holiday pay and sick pay is not compensation for services rendered as an employee for work done or services performed in the City. Vacation pay, holiday pay, sick pay and a bonus paid by the employer are deemed to have the same tax situs as the work assignment or work location and are taxable on the same ratio as the normal earnings of the employee for work actually done or services actually performed.
 - (2) On a distributive share of the net profits of a non-resident owner of an unincorporated business, profession, enterprise, undertaking or other activity, as a result of work done, services rendered and other business activities conducted in the City.
 - (3) On capital gains less capital losses from sales of, and on the net profits from rentals of, real and tangible personal property, if capital gains arise from property located in the city.
- (b) The amount of taxable compensation of nonresidents working in and out of the City is to be computed by dividing the total number of days worked in the City by the total number of days worked during the year, or the total number hours worked in the City by the total member of hours worked during the year, and applying the resulting percentage to gross annual compensation, including vacation, holiday, sickness and bonus pay; except that the amount of taxable compensation of a nonresident compensated on the volume of business secured or other results achieved by him or her such as a salesperson on a commission basis, shall be the amount received by him or her for business secured or other results achieved by him or her attributable to his efforts in the City.
- (c) The mere fact that a nonresident employee is subject to call at any time does not permit the allocation of compensation on a seven-day per week basis. The mere fact that a non-resident employee is compensated on a seven-day per week salary basis, when he or she does not in fact perform work or render services seven-days per week, does not permit the allocation of compensation on a seven-day per week basis. The mere fact that a nonresident employee takes work home with him or her and performs such work at his or her home does not permit the allocation of compensation.

- (d) A nonresident employee who is paid commissions and renewal commissions for selling insurance, not a general insurance agent who conducts his or her own independent insurance business, shall allocate such compensation on the following basis: for life, health and accident insurance; the locus shall be the location of the purchaser of the insurance; for group insurance the locus shall be the location of the group; for fire and casualty insurance the locus shall be the location of the risk insured, except that on vehicles it shall be the location of the purchaser
- (e) Compensation paid to officers or employees of the State of Michigan is subject to the tax. Such compensation shall be taxable even though the services are performed on property owned or controlled by the State within the corporate limits of the City of Ionia.
- (f) Compensation paid to officers or employees of the United States government not for service in the armed forces is subject to the tax. Such compensation shall be taxable even though the services are performed on property owned or controlled by the United States government within the corporate limits of the City of Ionia.
- (g) The mere fact that part or all of the work of a nonresident employee working within the City limits may be attributable to branches, governmental units, projects, undertakings or other activities outside of the corporate limits of the City of Ionia does not give rise to an exclusion of the related compensation from taxable income.
(Ord. 360. Passed 12-11-93.)

880.08 APPLICATION OF TAX TO CORPORATIONS.

(a) The tax shall apply on the taxable net profits of a corporation doing business in the City, being levied on such part of the taxable net profits as is earned by the corporation as a result of work done, services rendered and other business activities conducted in the City, as determined in accordance with this chapter. "Taxable net profits of a corporation" means Federal taxable income as defined in Section 63 of the Federal Internal Revenue Code but taking into consideration all exclusions and adjustments provided in this chapter. No deductions shall be allowed for:

- (1) Net operating losses and net capital losses sustained prior to the effective date of the tax.
- (2) The City income tax imposed by this chapter.

A corporation may deduct income, war profits and excess profits taxes, imposed by a foreign country or possession of the United States, allocable to income included in taxable net income, any part of which would be allowable as a deduction in determining Federal taxable income under the applicable provisions of the Federal Internal Revenue Code.

(b) Corporations are not permitted to file as so-called tax option corporations. Every corporation subject to the City tax must file a return and pay the tax, regardless of any option available to it under Sections 1371-1377 of the Federal Internal Revenue Code. The taxable income or net operating loss of a corporation shall not be prorated to the shareholders and reported on their individual returns.

(c) In determining taxable net profits of a corporation no deduction shall be allowed for:

- (1) Net operating losses and net capital losses sustained prior to the effective date of the City income tax, January 1, 1994.
- (2) The City income tax imposed by this chapter.
(Ord. 360. Passed 12-11-93.)

880.09 APPLICATION OF TAX TO UNINCORPORATED BUSINESS OR PROFESSION; SOLE PROPRIETORSHIP AND PARTNERSHIP.

(a) An unincorporated business, profession or other activity conducted by one or more persons subject to the tax as either a sole proprietorship or partnership shall not be taxable as such. The persons carrying on the unincorporated business, profession or other activity are liable for income tax only in their separate and individual capacities and on the following basis:

- (1) A resident proprietor or partner is taxable upon his or her entire distributive share of the net profits of the activity regardless of where the activity is conducted.
- (2) A nonresident proprietor or partner is taxable only upon his or her distributive share of the portion of the net profits of the activity which is attributable to the City under the allocation methods provided in this chapter.
- (3) In the hands of proprietor or partner of an unincorporated activity, the character of any item of income taxable under this chapter is determined as if such item were realized by the individual proprietor or partner directly from the source from which it is realized by the unincorporated activity. In computing his or her taxable income for a taxable year, a person who is required to file a return shall include therein his or her taxable distributive share of the net profits for any partnership year ending within or with his or her taxable year.

(b) A nonresident owner of an unincorporated business or profession must include in income subject to tax his or her distributive share of interest, dividends and other income from intangibles if such income is directly related to the nature of the business (as, for example, where one of the functions of the business is to lend money at interest). (Ord. 360. Passed 12-11-93.)

880.10 RETURN FOR UNINCORPORATED BUSINESS, PROFESSION OR ACTIVITY.

An unincorporated business, profession or other activity owned by two or more persons shall file an annual information return setting forth:

- (a) The entire net profit for the period covered by the return and the taxable portion of the net profit attributable to the City.
 - (b) The names and addresses of the owners of the unincorporated activity and each owner's taxable distributive share of the total net profit and each nonresident owner's share of the taxable net profit attributable to the City.
- (Ord. 360. Passed 12-11-93.)

880.11 ELECTION OF PAYMENT BY UNINCORPORATED BUSINESS, PROFESSION OR ACTIVITY.

(a) At the election of an unincorporated business, profession or other activity, the entity, on behalf of the owners, may compute and pay the tax due with respect to each owner's share of the net profit of the activity after giving effect to exemptions to which each owner is entitled. This election is available to all unincorporated business entities having two or more owners regardless of the residence of the owners. The tax thus paid by the entity shall constitute all tax due with respect to each owner's distributive share of the net profits of the unincorporated business, profession or other activity.

If the unincorporated business, profession or other activity elects under this section to file a return and pay the tax on behalf of its owners, the election and filing are deemed to meet the requirements of this chapter for the filing of a return for each owner who has no other income subject to the tax. However, a return is required from any such owner having taxable income other than his or her distributive share of the net profits of the entity. In such case the entire income subject to the tax shall be included in the return and credit taken thereon for the tax paid in his or her behalf by the unincorporated activity.

If the unincorporated business, profession or other activity elects to pay the tax on behalf of the owners then the unincorporated business, profession or other activity assumes the status of a taxpayer and is liable to interest and penalty if payment is not made by the due date, in accordance with the calendar or fiscal year used by the unincorporated business, profession or other activity.

(b) If the unincorporated business, profession or other activity elects to pay the tax on behalf of its owners then such unincorporated business, profession or other activity assumes the status of a taxpayer under Sections 880.27 to 880.29 and is required to file a declaration of estimated tax and pay the estimated tax shown thereon.
(Ord. 360. Passed 12-11-93.)

880.12 PARTIAL BUSINESS ACTIVITY IN CITY; APPORTIONMENT OF NET PROFIT.

(a) When the entire net profit of a business subject to the tax is not derived from business activities exclusively within the City, the portion of the entire net profit, earned as a result of work done, services rendered or other business activity conducted in the City, shall be determined at the election of the taxpayer under either Section 880.13(a), 880.14(a) to (e) or 880.14(f).

(b) The fact that a person fills orders by shipment to an out-of-City destination, when such person has no regularly maintained and established out-of-City location and engages in no out-of-City business activity, does not entitle such person to apportion part of his net profit as being earned as a result of work done, services rendered or other business activity conducted out of the City.

(c) The mere solicitation of orders by telephone or by catalogs or other mailed matter, from a location within the City for shipment to an out-of-City destination, does not of itself constitute out-of-City activity: The solicitation of orders for or on behalf of a person by an independent contractor does not constitute business activity by the person.
(Ord. 360. Passed 12-11-93.)

880.13 PARTIAL BUSINESS ACTIVITY IN CITY; SEPARATE ACCOUNTING METHOD.

(a) The taxpayer may petition for and the Administrator may grant approval of, or the Administrator may require, the separate accounting method. If such method is petitioned for, the Administrator may require a statement explaining the manner in which apportionment will be made, in sufficient detail to determine whether the net profits attributable to the City will be apportioned with reasonable accuracy.

(b) Approval to use the separate accounting method must be requested of the Administrator, in writing, within the first ninety days following the beginning of the taxable year or period for which its use is requested. (Ord. 360. Passed 12-11-93.)

880.14 PARTIAL BUSINESS ACTIVITY IN CITY; BUSINESS ALLOCATION PERCENTAGE METHOD.

(a) Application of Method. The business allocation percentage method shall be used if the taxpayer is not granted approval to use the separate accounting method of allocation. The entire net profits of such taxpayer earned as a result of work done, services rendered or other business activity conducted in the City shall be ascertained by determining the total "in-City" percentages of property, payroll and sales. "In-City" percentages of property, payrolls and sales, separately computed, shall be determined in accordance with subsections (b) to (e) hereof.

(b) Percentage of Average Net Book Value; Gross Rental Value of Real Property. First the taxpayer shall ascertain the percentage which the average net book value, of the tangible personal property owned and the real property, including leasehold improvements, owned or used by it in the business and situated within the City during the taxable period, is of the average net book value of all of such property, including leasehold improvements, owned or used by the taxpayer in the business during the same period wherever situated. Real property shall include real property rented or leased by the taxpayer and the value of such property shall be deemed to be eight times the annual gross rental thereon. "Gross rental of real property" means the actual sum of money or other consideration payable, directly or indirectly, by the taxpayer for the use or possession of real property and includes but is not limited to:

- (1) An amount payable for the use or possession of real property or any part thereof, whether designated as a fixed sum of money or as a percentage of sales, profits or otherwise.
- (2) An amount payable as additional rent or in lieu of rent such as interest, taxes, insurance, repairs or other amount required to be paid by the terms of a lease or other arrangement.

(c) Percentage of Compensation Paid Employees. Second, the taxpayer shall ascertain the percentage which the total compensation paid to employees for work done or for services performed within the City is of the total compensation paid to all the taxpayer's employees within and without the City during the period covered by the return. For allocation purposes, compensation shall be computed on the cash or accrual basis in accordance with the method used in computing the entire net income of the taxpayer.

If an employee performs services within and without the City, the following examples are not all inclusive but may serve as a guide for determining the amount to be treated as compensation for services performed within the City:

- (1) In the case of an employee compensated on a time basis, the proportion of the total amount received by him or her which his or her working time within the City is of his or her total working time.
- (2) In the case of an employee compensated directly on the volume of business secured by him or her, such as a salesperson on a commission basis, the amount received by him or her for business attributable to his or her efforts in the City.
- (3) In the case of an employee compensated on other results achieved, the proportion of the total compensation received which the value of his or her services within the City bears to the value of all his or her services.

(d) Percentage of Gross Revenue. Third, the taxpayer shall ascertain the percentage which the gross revenue of the taxpayer derived from sales made and services rendered in the City is of the total gross revenue from sales and services wherever made or rendered during the period covered by the return.

- (1) For the purposes of this section, "sales made in the City" means all sales where the goods, merchandise or property is received in the City by the purchaser, or a person or firm designated by him or her. In the case of delivery of goods in the City to a common or private carrier or by other means of transportation, the place at which the delivery has been completed is considered as the place at which the goods are received by the purchaser.

In determining "sales made in the City" the fact that title may pass to the purchaser on delivery to a common or private carrier or other means of transportation is immaterial. The place at which the goods are ultimately received after all transportation has been completed shall be considered as the place at which the goods are received by the purchaser.

The following examples are not all inclusive but may serve as a guide for determining sales made in the City:

- A. Sales to a customer in the City with shipments to a destination within the City from a location in the City or an out-of-City location are considered sales made in the City.
- B. Sales to a customer in the City with shipments to a destination within the City directly from the taxpayer's in-City supplier or out-of-City supplier are considered sales made in the City.

- C. Sales to a customer in the City with shipments directly to the customer at his or her regularly maintained and established out-of-City location are considered out-of-City sales.
 - D. Sales to an out-of-City customer with shipments or deliveries to the customer's location within the City are considered sales made in the City.
 - E. Sales to an out-of-City customer with shipments to an out-of-City destination are considered out-of-City sales.
- (2) In the case of public utilities, or businesses furnishing transportation services, "gross revenue", for the purposes of this subsection, may be measured by such means as operating revenues, vehicle miles, revenue miles, passenger miles, ton miles, tonnage or such other method as shall reasonably measure the proportion of gross revenue obtained in the City by such business.
 - (3) In case the business of the taxpayer involves substantial business activities other than sales of goods and services, such other method or methods of allocation shall be employed as shall reasonably measure the proportion of gross revenue obtained in the City by such business.

(e) Business Allocation Percentage. Fourth, the taxpayer shall add the percentages determined in accordance with subsections (b) to (d) hereof and divide the total by three and the result so obtained is the business allocation percentage. In determining this percentage, a factor shall be excluded from the computation only when the factor does not exist anywhere insofar as the taxpayer's business operation is concerned and, in such case, the total of the percentages shall be divided by the number of factors actually used. The business allocation percentage shall be applied to the entire net profits, wherever derived, of the taxpayer subject to the tax to determine the net profits allocable to the City.

(f) Substitute Methods. An alternative method of accounting shall be used if the taxpayer or the Administrator demonstrates that the net profits of the taxpayer allocable to the City, cannot be justly and equitably determined under the separate accounting method or the business allocation percentage method, or if undue expense to the taxpayer would result from complying therewith because of the taxpayer's manner of operations and methods of accounting. In such cases the Administrator, upon application of the taxpayer or upon his or her own initiative, may approve or specify factors or methods of determination as will effect

a just, non-discriminatory and reasonable result. Application to the Administrator to substitute other factors in the formula or to use a different method to allocate net profits shall be made in writing and state the specific grounds on which the substitution of factors or use of a different method is requested and the relief sought. No specific form need be followed in making the application. Once a taxpayer has filed under a substitute method, he or she shall continue so to file until given permission by the Administrator to change.
(Ord. 360. Passed 12-11-93.)

880.15 CAPITAL GAINS AND LOSSES; DETERMINATION.

(a) Capital gains and capital losses, other than gains and losses on securities issued by the government of the United States, shall be included in income only to the extent of that portion of the gains or losses which occur after the effective date of this chapter. In determining the amount of gain or loss, the taxpayer may use net proceeds from the sale or exchange less fair market value as of the effective date of this chapter. The fair market value of property shall be determined by an appraisal or similar reliable evidence. The fair market value of a security shall be the last quoted price on the last business day prior to such effective date. For a security traded over the counter the last quoted price shall be the last bid price on the last business day prior to such effective date. The taxpayer may determine the gain or loss on a transaction in the same manner as for Federal Income Tax purposes taking into account only that portion thereof which occurs after such effective date. The portion of that gain or loss includible in computing taxable income will be the same proportion of the total gain or loss as the period of time the property was held after the effective date of this chapter bears to the total time the property was held. In any city adopting this ordinance which had a valid local income tax ordinance in effect on January 1, 1964, capital gains and losses shall be included to the extent of that portion of such gains or losses which occur after the effective date of the original city income tax ordinance.

(b) If capital losses exceed capital gains in a taxable year, the unused portion may be utilized to the same extent and on the same basis as under the Federal Internal Revenue Code.

(Ord. 360. Passed 12-11-93.)

880.16 ESTATES OR TRUSTS.

(a) An estate or trust is not subject to tax under this chapter, except that it shall be treated as a nonresident individual for purposes of Section 880.03 to the extent income of the estate or trust described in Section 880.03 is not includable in the return of a resident individual as "income from estates and trusts." A resident individual shall include "income from estates and trusts" in his or her income subject to tax under this chapter without regard to the situs of the estate or trust. For this purpose, an "estate" means the estate of a deceased person during the period of administration or settlement and a "trust" means an inter vivos or testamentary trust created by an individual for the benefit of one or more persons.

(b) "Income from estates" means "income", as defined in Section 643(b) of the Federal Internal Revenue Code, properly paid, credited or distributed but not in excess of the resident individual's share of the distributable net income of the estate decreased by the amount of depreciation or depletion allowed the resident individual as a deduction under Section 642 of the Federal Internal Revenue Code. The exceptions hereinafter set forth with respect to trusts are also applicable to income from estates. "Income from trusts" means the amount of "income" as defined in Section 643(b) of the Federal Internal Revenue Code, distributed or required to be distributed under Section 652(a) or 662(a)(1) of the Federal Internal Revenue Code, decreased by the amount of depreciation or depletion allowed the resident individual as a deduction by Section 642 of the Federal Internal Revenue Code, with the following exceptions:

- (1) Dividends on stock of state and national banks and trust companies.
- (2) Interest from obligations of the United States, the states or subordinate units of government of the states.
- (3) Income received by a resident individual from a fiduciary shall retain the character it held in the hands of the fiduciary. With respect to trusts where the income is taxed to the grantor or other person under subpart E of subchapter J of the Federal Internal Revenue Code, the grantor or other person shall include in his or her return all items of income and deductions allowed by this chapter.
- (4) An individual shall include income from estates and trusts in his or her return in the same year as provided in the Federal Internal Revenue Code with respect to distributions of income from estates and trusts. The amount of income included in the return for the first tax year of a resident individual, with respect to estates and trusts, shall be computed as though the tax year of the estate or trust for Federal Income Tax purposes began on the effective date of this chapter and ended with the end of the tax year of the estate or trust for Federal Income Tax purposes which ends next following such effective date. (Ord. 360. Passed 12-11-93.)

880.17 EXEMPTIONS.

(a) An individual taxpayer in computing his or her taxable income is allowed a deduction of seven hundred dollars (\$700.00) for each personal and dependency exemption under the rules for determining exemptions and dependents as provided in the Federal Internal Revenue Code. The taxpayer may claim his or her spouse and dependents as exemptions, but if the taxpayer and the spouse are both subject to the tax imposed by this chapter, the number of exemptions claimed by each of them when added together shall not exceed the total number of exemptions allowed under this chapter.

(b) In addition to the exemptions for an individual taxpayer set forth in this section, an additional exemption in the amount of seven hundred dollars (\$700.00) is allowed for an individual taxpayer whose deduction under Section 151 of the Federal Internal Revenue Code is allowable to another taxpayer during the tax year.

(c) In addition to the exemptions set forth in this section, an exemption of seven hundred dollars (\$700.00) is allowed for an individual taxpayer whose deduction under Section 151 of the Federal Internal Revenue Code is allowable to another taxpayer during the tax year.

(d) In addition to the exemptions set forth in this section, an additional exemption of seven hundred dollars (\$700.00) each is allowed for an individual taxpayer who is a paraplegic, quadriplegic, hemiplegic or totally and permanently disabled person, as defined in Section 216 of Title II of the Social Security Act, 42 U.S.C. 416, or an individual taxpayer who is a deaf person, as defined in Section 2 of the Deaf Persons Interpreters Act, Act 204 of the Public Acts of 1982, being M.C.L.A.393.502. (Ord. 360. Passed 12-11-93.)

880.18 PAYMENTS AND BENEFITS NOT SUBJECT TO TAX.

(a) The following payments and benefits received by any person are not subject to the tax:

- (1) Gifts and bequests
- (2) Proceeds of insurance, annuities, pensions and retirement benefits. Amounts received for personal injuries, sickness or disability are excluded from taxable income only to the extent provided by the Federal Internal Revenue Code.
- (3) Welfare relief unemployment benefits, including supplemental unemployment benefits, and workmen's compensation or similar payments from whatever source derived.
- (4) Amounts received by charitable, religious, educational and other similar nonprofit organizations which are exempt from taxation under the Federal Internal Revenue Code.
- (5) Amounts received by supplemental unemployment benefit trusts or pension, profit sharing and stock bonus trusts qualified and exempt under the Federal Internal Revenue Code.
- (6) Interest from obligations of the United States, the states or subordinate units of government of the states and gains or losses on the sales of obligations of the United States.

- (7) Net profits of financial institutions and insurance companies.
- (8) Amounts paid to an employee as reimbursement for expenses necessarily and actually incurred by him or her in the actual performance of his or her services and deductible as such by the employer.
- (9) Compensation received for service in the armed forces of the United States.

(b) Service in the armed forces of the United States shall include service in the Army, Navy, Marine Corp, Air Force and Coast Guard. It shall not include employment as a civilian by the armed forces.

(c) Payments made by an employer to an employee with respect to periods during which the employee is serving in the Armed Forces are not to be considered compensation received for services in the armed forces. (Ord. 360. Passed 12-11-93.)

880.19 DEDUCTIBLE EXPENSES GENERALLY.

Ordinary, necessary, reasonable and unreimbursed expenses paid or incurred by an individual in connection with the performance by him or her of services as an employee may be deducted from gross income in determining income subject to the tax to the extent the expenses are applicable to income taxable under this chapter. The expenses are limited to the following:

- (a) Expenses of travel, meals and lodging while away from home.
- (b) Expenses as an outside salesperson, away from his or her employer's place of business.
- (c) Expenses of transportation.
- (d) Expenses under a reimbursement or other expense allowance arrangement with his or her other employer, where the reimbursement or allowance has been included in total compensation reported. (Ord. 360. Passed 12-11-93.)

880.20 SPECIFIC DEDUCTIBLE EXPENSES.

The following expenses paid or incurred by an individual may be deducted from gross income in determining income subject to tax to the extent the expenses are applicable to income taxable under this chapter:

- (a) An individual may deduct alimony, separate maintenance payments and principal sums payable in installments, to the extent includable in the spouse's adjusted gross income under the Federal Internal Revenue Code, but only to the extent deductible by the individual under the Federal Internal Revenue Code. A nonresident individual may deduct only that proportion of his or her alimony, separate maintenance or principal sums payable in installments that his or her income taxable under this chapter bears to his or her total Federal adjusted gross income.
- (b) An employee or self-employed individual may deduct moving expenses to the extent provided in Section 217 of the Federal Internal Revenue Code.
- (c) A self-employed individual may deduct payments to a qualified retirement plan to the extent provided in Section 404 of the Federal Internal Revenue Code.
- (d) An individual may deduct payments to an individual retirement account established pursuant to the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001 to 1381, to the extent provided in Section 219 of the Internal Revenue Code. (Ord. 360. Passed 12-11-93.)

**880.21 QUALIFIED TAXPAYER WITHIN RENAISSANCE ZONE;
DETERMINATION OF DEDUCTIONS CLAIMED.**

(a) Notwithstanding any other provision of this chapter, and to the extent and for the duration provided in the Michigan Renaissance Zone Act, Act 376 of the Public Acts of 1996, as amended, being sections 125.2681 to 125.2696 of the Michigan Compiled Laws, for the 1997 tax year and each tax year after 1997, a qualified taxpayer may deduct from gross income, in determining income subject to tax under this chapter, to the extent a deduction is applicable to income subject to the tax under this chapter, an amount equal to one of the following for the specified types of taxpayers:

- (1) For a qualified taxpayer as defined in paragraph (l)(3)A. hereof:
 - A. Except as provided in paragraphs (a)(1)B. and C. hereof, income subject to the tax that is earned or received in the tax year during the period of time that the taxpayer was a qualified taxpayer.
 - B. Capital gains subject to the tax that are received during the tax year during the period of time that the taxpayer was a qualified taxpayer. The deduction allowed under this subdivision shall be prorated based on the percentage of time that the asset was held by the taxpayer while the taxpayer was a qualified taxpayer.

- C. Income received by the qualified taxpayer from winning an on-line lottery game sponsored by the State, but only if the date on which the drawing for that game was held is after the taxpayer became a qualified taxpayer of a renaissance zone, and income received by the taxpayer from winning an instant lottery game sponsored by the State, but only if the taxpayer was a qualified taxpayer of a renaissance zone on the validation date of the lottery ticket for that game.
- (2) For a qualified taxpayer as defined in paragraph (1)(3)B. hereof, the amount determined pursuant to Sections 880.08, 880.13 and 880.14, multiplied by a fraction, the numerator of which is the percentage that the average net book value of the tangible personal property owned and the real property, including leasehold improvements, owned or used by the qualified taxpayer in the business and situated within the renaissance zone during the taxable period, is of the average net book value of all such property, including leasehold improvements, owned or used by the taxpayer in the business during the same period situated in the City, plus the percentage that the total compensation paid to employees for work done or for services performed within the renaissance zone is of the total compensation paid to all the taxpayer's employees within the City during the period covered by the return, and the denominator of which is two. For allocation purposes, compensation shall be computed on the cash or accrual basis in accordance with the method used in computing the entire net income of the taxpayer. Real property includes real property rented or leased by the qualified taxpayer, and the value of that property is considered to be eight times the annual gross rental on the property. "Gross rental on the property" means gross rental of real property as that term is defined in Section 880.14(b).
- (3) For a qualified taxpayer as defined in paragraph (1)(3)C. hereof, the amount determined pursuant to Section 880.09, multiplied by a fraction, the numerator of which is the percentage that the average net book value of the tangible personal property owned and the real property, including leasehold improvements, owned or used by the qualified taxpayer in the business and situated within the renaissance zone during the taxable period, is of the average net book value of all such property, including leasehold improvements, owned or used by the taxpayer in the business during the same period situated in the City plus the percentage that the total compensation paid to employees for work done or for services

performed within the renaissance zone is of the total compensation paid to all the taxpayer's employees within the City during the period covered by the return, and the denominator of which is two. For allocation purposes, compensation shall be computed on the cash or accrual basis in accordance with the method used in computing the entire net income of the taxpayer. Real property includes real property rented or leased by the qualified taxpayer, and the value of that property is considered to be eight times the annual gross rental on the property. "Gross rental on the property" means gross rental of real property as that term is defined in Section 880.14(b).

(b) For a qualified taxpayer as defined in paragraphs (1)(3) B. and C. hereof, any portion of income subject to tax under this chapter derived from illegal activity conducted in a renaissance zone shall not be used to calculate a deduction allowed under this section. For a qualified taxpayer who is an individual, any portion of income subject to tax under this chapter derived from illegal activity conducted anywhere shall not be used to calculate the deduction allowed under this section. For a qualified taxpayer as defined in paragraphs (1)(3) B. and C. hereof, any portion of the taxpayer's tax liability that is attributable to business activity related to the operation of a casino, and business activity that is associated or affiliated with the operation of a casino, including, but not limited to, the operation of a parking lot, hotel, motel, or retail store, shall not be used to calculate a credit under this subsection. As used in this subsection, "casino" means a casino regulated by the State pursuant to the Michigan Gaming Control and Revenue Act, Initiated Law of 1996, being Sections 432.201 to 432.216 of the Michigan Compiled Laws.

(c) Income used to calculate a deduction under any other section of this chapter shall not be used to calculate a deduction under this section.

(d) If a qualified taxpayer completes the residency requirements under paragraph (1)(3) hereof before the end of the tax year in which the qualified taxpayer first resided in the renaissance zone, the qualified taxpayer may claim the deduction allowed under this section for that tax year. If the qualified taxpayer completes the residency requirements under paragraph (1)(3) hereof in a tax year subsequent to the tax year in which the qualified taxpayer first resided in the renaissance zone, the following apply:

- (1) If the qualified taxpayer completes the residency requirement in a tax year subsequent to the tax year in which the taxpayer first resided in the renaissance zone and before the date for filing the annual return under this chapter for the tax year in which the taxpayer first resided in the renaissance zone, the taxpayer may claim the deduction allowed under this section for the tax year in which the taxpayer first resided in the renaissance zone.

- (2) If the qualified taxpayer completes the residency requirement in a tax year subsequent to the tax year in which the taxpayer first resided in the renaissance zone and after the date for filing the annual return under this chapter for the tax year in which the taxpayer first resided in the renaissance zone, the qualified taxpayer may claim the deduction allowed under this section for the tax year in which the residency requirement is completed on the annual return for the tax year in which the residency requirement is completed and may claim the deduction for the tax year in which the qualified taxpayer first resided in the renaissance zone by filing an amended return for that tax year in which the qualified taxpayer first resided in the renaissance zone.

(e) To be eligible for the deduction under this section, a taxpayer shall file an annual return under this chapter.

(f) A qualified taxpayer shall file a withholding form prescribed by the City with his or her employer after the date the qualified taxpayer completes the requirements under paragraph (1)(3)A. hereof or, at the option of the City, for taxpayers who claim to be qualified taxpayers under paragraph (1)(3)A. hereof, the taxpayer shall file a form prescribed by the City with the City after the date the taxpayer completes the requirements under paragraph (1)(3)A. hereof. If the City verifies the information on the form, the City shall issue a certificate of qualification to the taxpayer which the taxpayer shall file with his or her employer. When a taxpayer who filed a form under this subsection is no longer a qualified taxpayer under paragraph (1)(3)A. hereof, the taxpayer shall send a written notice of that change in status to the City not more than ten days after the change in status occurs.

(g) If the Administrator finds that a taxpayer has claimed a deduction under this section to which he or she is not entitled, the taxpayer is subject to the interest and penalty provisions under this chapter.

(h) The deduction allowed under this section continues through the tax year in which the renaissance zone designation expires.

(i) A net operating loss deduction allowed under this chapter shall be calculated without regard to any deduction allowed under this section

(j) If a taxpayer who was a qualified taxpayer during the tax year changes status and is not a qualified taxpayer or vice versa, income subject to tax under this chapter shall be determined separately for income in each status.

(k) A qualified taxpayer as defined in paragraph (l)(3)A. hereof, is a resident of a renaissance zone for purposes of Act 376 of the Public Acts of 1996, as amended. A qualified taxpayer as defined in paragraph (l)(3)B. or C. is located and conducts business in a renaissance zone, for purposes of Act 376 of the Public Acts of 1996, as amended.

(l) As used in this section:

- (1) "Conducts business activity" means doing business as defined in this chapter.
- (2) "Domicile" means a place where a person has his or her true, fixed, and permanent home and principal establishment to which, whenever absent, he or she intends to return, and domicile continues until another permanent establishment is established.
- (3) "Qualified taxpayer" means one of the following:
 - A. A taxpayer who is an individual, a resident of the City as determined under this chapter, and is domiciled in an area of the City that is designated a renaissance zone for a period of 183 consecutive days. A taxpayer may begin calculating the 183-day period during the 183 days immediately preceding the designation of the area as a renaissance zone. "Qualified taxpayer" under this paragraph includes the estate of an individual who was a qualified taxpayer at the time of death. After a taxpayer has completed the 183-day requirement under this paragraph, the taxpayer is considered to have been a qualified taxpayer of the renaissance zone beginning from the first day used to determine if the 183-day requirement has been met.
 - B. A taxpayer that is a corporation and that is located and conducts business activity in a renaissance zone in the City
 - C. A person who is located in and conducts business activity as an unincorporated business, profession, or other activity in a renaissance zone and is not a qualified taxpayer under paragraph (l)(3) A. or B. hereof.
- (4) "Renaissance zone" means that term as defined in Act 376 of the Public Acts of 1996, as amended. (Ord. 360. Passed 12-11-93.)

880.22 ANNUAL RETURN; JOINT RETURN.

(a) Every corporation doing business in the City and every other person having income taxable under this chapter in any year before the 1997 tax year or in any tax year after the 1996 tax year for which the City has not entered into an agreement with the Department of Treasury pursuant to Section 9 of Chapter 1 of the Internal Revenue Code, shall make and file with the City an annual return for that year, on a form furnished or approved by the City on or before the last day of the fourth month for the same calendar year, fiscal year or other accounting period that has been accepted by the Internal Revenue Service for Federal Income Tax purposes for the taxpayer. For tax years after the 1996 tax year and for which the City has entered into an agreement pursuant to Section 9 of Chapter 1 of the Internal Revenue Code, the annual return required by this subsection shall be filed with the City or the Department as provided by the agreement on or before the fifteenth day of the fourth month for the same calendar year, fiscal year or other accounting period that has been accepted by the Internal Revenue Service for Federal Income Tax purposes for the taxpayer.

(b) A husband and wife may file a joint return and, in such case, the tax liability is joint and several.

(c) The fact that a taxpayer has paid his or her entire tax liability on a declaration of estimated tax does not relieve him from the requirement of filing an annual return (see Section 880.29 (a)).

The fact that an individual not subject to withholding has an entire tax liability of one dollar (\$1.00) or less does not relieve him or her from the requirement of filing an annual return.

(d) A husband and wife who both have income subject to the tax and who elect to file separate returns may each take only those exemptions to which they would be entitled under the Federal Internal Revenue Code. (Ord. 360. Passed 12-11-93.)

880.23 RETURNS; CONTENTS.

(a) The annual return shall set forth:

- (1) The number of exemptions, place of residence, place of employment and other pertinent information as shall reasonably be required.
- (2) The aggregate amount of compensation, dividends, interest, net profit from rentals, capital gains less capital losses, net profits from business and other income, subject to the tax.
- (3) The total amount of the tax imposed by this chapter.

- (4) The amount of the tax previously withheld or paid.
- (5) Credits provided in this chapter.
- (6) The balance of the tax due or to be refunded.

(b) In filing his or her annual return an individual shall support his or her claim for the amount of tax previously withheld by attaching thereto a copy of the information return, Form W-2 or IW-2, required to be furnished him or her by his or her employer in Section 880.26(k)(2). (Ord. 360. Passed 12-11-93.)

880.24 PAYMENT OF TAX; REFUND; INTEREST; ALLOCATION OF PAYMENT; NOTICE; NONOBLIGATED SPOUSE; FORM; FILING; RELEASE OF LIABILITY.

(a) A balance of the tax which is due the City at the time of filing the annual return shall be paid with the return unless the balance is less than one dollar (\$1.00), in which case payment is not required.

(b) If the annual return reflects an overpayment of the tax, the declaration of the overpayment on the return constitutes a claim for refund. Subject to subsection (f) hereof, if the City or the Department of Treasury agrees that a claim is valid, the City or the Department shall apply the overpayment first to a delinquent tax liability under this chapter of the taxpayer to the City. The City shall apply any remaining overpayment against a subsequent liability under this chapter or, at the election of the taxpayer and if indicated on the return, shall refund the overpayment. However, the City shall not pay a refund of less than one dollar (\$1.00).

(c) If a valid claim for a refund of taxes, except a refund under Section 880.26(k), due for the taxable year 1992 or a taxable year after 1992 is filed, interest at the rate established in Section 30(3) of Act 122 of the Public Acts of 1941, as amended, being Section 205.30 of the Michigan Compiled Laws, shall be added to the refund beginning forty-five (45) days after the claim is filed or forty-five (45) days after the date established under this chapter for the filing of the return, whichever is later. For tax years after the 1996 tax year and for which a city has entered into an agreement pursuant to Section 9 of Chapter 1 of the Internal Revenue Code, a claim for refund shall be paid from money in the City Income Tax Trust Fund.

(d) For tax years after the 1995 tax year and for which a city has entered into an agreement pursuant to Section 9 of Chapter 1 of the Internal Revenue Code, if a taxpayer pays, when filing his or her annual return, an amount less than the sum of the declared tax liability under this chapter, and the declared tax liability under the Income Tax Act of 1967, being Act 218 of the Public Acts of 1967, as amended, being Sections 206.1 to 206.532 of the Michigan Compiled Laws, and there is no indication of the allocation of payment between the tax liabilities against which the payment should be applied, the amount paid shall first be applied against the taxpayer's tax liability under this chapter, and any remaining amount of payment shall be applied to the taxpayer's tax liability, under Act 281 of the Public Acts of 1967, as amended. The taxpayer's designation of a payee on a payment is not a dispositive determination of the allocation of that payment under this subsection.

(e) If the claim for refund is reflected on a joint tax return, the Administrator shall allocate to each joint taxpayer his or her share of the refund. The amount allocated to each taxpayer shall be applied to his or her respective liabilities under this chapter.

(f) If the Administrator or the Department determines that all or a portion of a refund claimed on a joint tax return is subject to application to a liability of an obligated spouse, the Administrator or the Department shall notify the joint taxpayers by first class mail sent to the address shown on the joint return. The notice shall be accompanied by a nonobligated spouse allocation form. The notice shall state all of the following:

- (1) That all or a portion of the refund claimed by the joint taxpayers is subject to interception to satisfy a liability or liabilities of one or both spouses.
- (2) The nature of the liability and the name of the obligated spouse or spouses.
- (3) That a nonobligated spouse may claim his or her share of the refund by filing a nonobligated spouse allocation form with the City or the Department not more than thirty days after the date the notice was mailed.
- (4) A statement of the penalties under subsection (i) hereof.

(g) A nonobligated spouse who wishes to claim his or her share of a tax refund shall file with the City or the Department a nonobligated spouse allocation form. The nonobligated spouse allocation form shall be in a form specified by the Administrator or the Department and shall require the spouses to state the amount of income or other tax base and all adjustments to the income or other tax base, including all subtractions, additions, deductions, credits and exemptions, stated on the joint tax return that is the basis for the claimed refund, and an allocation of those amounts between the obligated and nonobligated spouse. In allocating these amounts, all of the following apply:

- (1) Individual income shall be allocated to the spouse who earned the income. Joint income shall be allocated equally between the spouses.
- (2) Each spouse shall be allocated the personal exemptions he or she would be entitled to claim if separate Federal returns had been filed, except that dependency exemptions shall be prorated according to the relative income of the spouses.
- (3) Adjustments resulting from a business shall be allocated to the spouse who claimed income from the business.
- (4) Ownership of other assets relevant to the allocation shall be disclosed upon request of the Administrator or the Department.

(h) A nonobligated spouse allocation form shall be signed by both joint taxpayers. However, the form may be submitted without the signature of the obligated spouse if his or her signature cannot be obtained. The nonobligated spouse shall certify that he or she has made a good faith effort to obtain the signature of the obligated spouse and shall state the reason that the signature was not obtained.

(i) A person who knowingly makes a false statement on a nonobligated spouse allocation form is subject to a penalty of twenty-five dollars (\$25.00) or twenty-five percent of the excessive claim for his or her share of the refund, whichever is greater, and other penalties as provided in this chapter.

(j) A nonobligated spouse to whom the Administrator or the Department has sent a notice under subsection (f) hereof, who fails to file a nonobligated spouse allocation form within thirty (30) days after the date the notice was mailed, shall be barred from commencing any action against the City or the Department to recover an amount withheld to satisfy a liability of the obligated spouse to which a joint tax refund is applied under this section. The payment by the City or the Department of any amount applied to a liability of a taxpayer under this section shall release the Department or the City and the Administrator from all liability to the obligated spouse, the nonobligated spouse and any other person having or claiming any interest in the amount paid. A payment by the Department under this subsection shall be made from the City Income Tax Trust Fund created in Section 5 of Chapter 1 of the Internal Revenue Code.

(k) As used in this section:

- (1) "Nonobligated spouse" means a person who has filed a joint City income tax return and who is not liable for an obligation of his or her spouse described in this chapter.

- (2) "Obligated spouse" means a person who has filed a joint City income tax return and who is liable for an obligation described in this chapter for which his or her spouse is not liable. (Ord. 360. Passed 12-11-93.)

880.25 FEDERAL INCOME TAX RETURN; ELIMINATIONS.

(a) Where total income, total deductions, net profits or other figures are derived from the taxpayers Federal Income Tax return, any item of income not subject to the City income tax and unallowable deductions shall be eliminated in determining net income subject to the City tax. The fact that a taxpayer is not required to file a Federal Income Tax return does not relieve him or her from filing a City tax return.

(b) For the purpose of determining net profit allocable to the City under this chapter, a corporate taxpayer may elect to file a consolidated return, including subsidiaries whose voting stock is more than fifty percent owned by the taxpayer if such return will more properly reflect the net profits and activities of the taxpayer in the City. The City may require a consolidated return if necessary to properly determine net profits of the taxpayer allocable to the City.

(c) An amended return shall be filed with the City or the Department, on a form obtainable from the City or the Department, if necessary to report additional income and pay an additional tax due, or to claim a refund of tax overpaid. Within ninety days after final determination of a Federal tax liability which also affects the computation of a taxpayer's City income tax liability, the taxpayer shall prepare and file an amended City income tax return showing income subject to the City tax based upon the final determination of Federal income tax liability, and pay any additional tax shown due on the return or make claim for refund of an overpayment. A taxpayer shall not change the method of accounting or apportionment of net profits after the due date for filing the original return, or any extensions for filing of the original return. (Ord. 360. Passed 12-11-93.)

880.26 WITHHOLDING OF TAX BY EMPLOYER; EMPLOYER AS TRUSTEE; FAILURE OR REFUSAL TO DEDUCT AND WITHHOLD TAX; LIABILITY; DISCHARGE.

(a) Withholding Required.

- (1) An employer doing business or maintaining an establishment within the City shall withhold from each payment to the employer's employees on and after the effective date of this chapter the tax on their compensation subject to the tax, after giving effect to exemptions, as follows:

- A. Residents.
 - 1. At a rate equal to one percent of all compensation paid to the employee who is a resident of the City, if he or she is not subject to withholding in any other city levying the tax.
 - 2. At a rate equal to one-half of one percent of all compensation paid to the employee. Who is a resident of the city from whom the employer is required to withhold on such compensation earned in another city.
 - B. Nonresidents. At a rate equal to one-half of one percent of the compensation paid to the employee for work done or services performed in the city designated by the employee as his or her predominant place of employment. The withholding rate shall be applied to the percentage of the employee's total compensation equal to the employee's estimated percentage of work done or services to be performed in the City for such employer, but no withholding shall be required if the estimated percentage of work is less than twenty-five percent.
- (2) An employer withholding the tax is deemed to hold such tax as a trustee for the City.
 - (3) An employer who is required to withhold and who fails or refuses to deduct and withhold is liable for the payment of the amount required to be withheld. The liability shall be discharged upon payment of the tax by the employee but the employer is not relieved of penalties and interest provided in this chapter for such failure or refusal.
 - (4) In determining whether the tax shall be withheld from musicians, entertainers, athletes and other such individuals, the definition of "employee" in Section 880.02(b)(8) shall be controlling.
 - (5) An employer, whether or not an individual, and whether or not a resident of the City, who maintains a business establishment or business establishments in the City and a business establishment or business establishments outside the City must withhold the tax from all Ionia residents working at such employer's out-of-City establishment or establishments.
 - (6) Compensation subject to withholding shall include wage and salary advances, and advances on commissions.

(b) Payments or Persons Excepted From Withholding.

- (1) Employers shall not withhold any tax from the following payments or persons:
 - A. Compensation paid to domestic help.
 - B. Compensation paid to a person who is not an employee, including an independent contractor.
 - C. An amount allowed and paid to an employee as reimbursement for expenses necessarily and actually incurred by the employee in the actual performance of his or her services, and that is deductible by the employer.
 - D. A qualified taxpayer as defined in Section 880.21(1)(3) A.
- (2) An employer who directly makes wage continuation payments for personal injuries, sickness or disability may elect to withhold or not withhold the tax on the exempt portion of such payments. In either case the amount of exempt income shall be included in the total amount of compensation reported on the annual information return required of all employers under paragraph (k)(2) hereof, either as part of total wages paid or as a separate figure.

(c) Employee Responsibility and Liability re Withholding. If the tax is not withheld, an employee is not excused from filing a return and paying the tax on his or her compensation. If the tax is withheld but an employer fails to pay the tax to the City, the employee is not liable for the tax so withheld.

(d) Filing of Employee Form Required. An employee with compensation subject to tax shall file with his employer a form on which the employee states the number of exemptions claimed, the city of residence, the predominant place of employment, whether or not the employee claims status as a qualified taxpayer of a renaissance zone, and the percentage of work done or services performed in the predominant place of employment. The percentage shall be expressed as "less than twenty-five percent, forty percent, sixty percent, eighty percent or one hundred percent." The employer shall retain the form, rely on the information on the form for withholding purposes unless directed by the City to withhold on another basis, and, if the employee claims status as a qualified taxpayer based on residency in a renaissance zone, forward a copy of the form to the City. If information submitted by the employee is not believed to be true, correct and complete, the City shall be so advised. As used in this section, "renaissance zone" means that term as defined in Section 880.21.

(e) Filing of Revised Form.

- (1) Except as provided in paragraph (e)(2) hereof, an employee shall file with his or her employer a revised form within ten days after the number of exemptions decreases or when a change in residence from or to a taxing city occurs. The employee may file a revised form when his or her number of exemptions increases. An employee shall file a revised form by December 1 of each year if his or her predominant place of employment, estimate of the percentage of work done or services to be rendered in the City or status as a qualified taxpayer of a renaissance zone will change for the ensuing year. Revised withholding certificates shall not be given retroactive effect.
- (2) An employee shall file a revised form with his or her employer within ten days after the employee completes the residency requirements under Section 880.21(l), and when a change of status occurs from resident of a renaissance zone to nonresident of a renaissance zone, the employer shall forward a copy of a revised form filed under this subsection to the City.

(f) Refusal of Employee to Furnish Withholding Certificate. If an employee refuses to furnish a withholding certificate upon the request of his or her employer, the employer shall withhold one percent of the employee's total compensation and report and pay the withholding on the basis of the best information in the possession of the employer.

(g) Withholding Tables; First Compensation.

- (1) The City shall provide withholding tables establishing the amounts to be withheld for various tax rates, wage brackets, numbers of exemptions and pay periods. An employer who uses the tables fully discharges his or her duty to withhold. An employer may elect not to use the tables, in which case, to discharge fully his or her duty to withhold he or she shall withhold, the applicable percent of taxable compensation after provision for exemptions.
- (2) The first compensation paid an employee on or after the effective date of the tax levy is subject to withholding on either of the following bases at the option of the employer:
 - A. On the full amount of compensation paid.
 - B. On the proportion of compensation paid for work done or services performed on or after the effective date of the levy.

(h) Overwithheld Tax; Refund. If an employer withholds more than the apparent tax liability of an employee due to an increase in the number of exemptions claimed during the year, due to the actual percentage of work performed in the City by a non-resident being less than the estimated percentage, due to a change of residence during the year to or from a taxing city or due to any reason other than the employer's error, the employer shall neither refund the excess to the employee nor offset the excess by under-withholding in a subsequent period. The employee shall claim his or her refund from the City on his or her annual return.

(i) Correction of Withholding Error. Correction of an over or an under-withholding as a result of employer's error shall be made as follows:

- (1) If the error is discovered in the same quarter in which it is made, the employer shall make the necessary adjustment on a subsequent pay and include only the corrected amount on the quarterly return.
- (2) If the error is discovered in a subsequent quarter of the same calendar year, the employer shall make the necessary adjustment on a subsequent pay and report it as an adjustment on the quarterly return.
- (3) If the error is discovered in the following calendar year, or if the employer-employee relationship has terminated, the procedure shall be as follows:
 - A. The employee or former employee shall apply to the City for a refund in case of an over-withholding. Upon proper verification, the City shall refund to such employee or former employee the amount of the over-withholding.
 - B. If a deficiency is discovered, the employer shall notify the cities and the employee or former employee, who shall pay the City the additional tax due in his or her annual return.

(j) Filing of Return; Payment by Employer; Electronic Funds Transfer.

- (1) Except as provided in paragraph (j)(2) hereof, an employer shall file a return, furnished by or obtainable on request from the City, and pay to the City the full amount of the tax withheld on or before the last day of the month following the close of each calendar quarter.
- (2) For tax years after the 1996 tax year and for which a City has entered into an agreement pursuant to Section 9 of Chapter 1 of the Internal Revenue Code, an employer shall file a return and pay the tax withheld for each calendar month on or before the fifteenth day of the month following the close of each calendar month to the Department of Treasury by means of an electronic funds transfer method approved by the State Commissioner of Revenue.

(k) Employers' Reconciliation of Quarterly Returns; Deficiency and Refund; Information Return; Cessation of Business.

- (1) An employer shall file with the City or the Department of Treasury a reconciliation of quarterly returns on or before the last day of February following each calendar year in which the employer has withheld from an employee's compensation. A deficiency is due when the reconciliation is filed. If the employer made quarterly payments in excess of the amount withheld from an employee's compensation, the City or the Department, upon proper verification, shall refund the excess to the employer.
- (2) In addition to the reconciliation, the employer shall file with the City or the Department an information return for each employee from whom the City income tax has been withheld and each employee subject to withholding under this chapter, setting forth his or her name, address and Social Security number, the total amount of compensation paid him or her during the year, and the amount of City income tax withheld. The information return shall be on a copy of the Federal W-2 form or on a form furnished or approved by the City or the Department. A copy of the information return shall be furnished to the employee.
- (3) Except as provided in paragraph (k)(3) hereof, if an employer goes out of business or otherwise ceases to be an employer, reconciliation forms and the information return forms shall be filed with the City by the date the final withholding return and payment are due.
- (4) For tax years after the 1996 tax year and for which the City has entered into an agreement pursuant to Section 9 of Chapter 1 of the Internal Revenue Code, if an employer goes out of business or otherwise ceases to be an employer, reconciliation forms and the information return forms shall be filed with the Department within thirty days after the employer goes out of business or ceases to be an employer.

(Ord. 360. Passed 12-11-93.)

880.27 DECLARATION OF ESTIMATED TAX; FILING; FORM; TIME; EXCEPTIONS.

(a) A person who anticipates taxable income from which the City income tax will not be withheld with the City or the Department shall file a declaration of estimated tax on a form furnished by or obtainable on request from the City or the Department of Treasury if the City has entered into an agreement pursuant to Section 9 of Chapter 1 of the Internal Revenue Code. A calendar year taxpayer shall file a declaration on or before each April 30 or, for tax years after the 1996 tax year and for which the City has entered into an agreement with the Department pursuant to Section 9 of Chapter 1 of the Internal Revenue Code, on or before each April 15. A taxpayer on a fiscal year basis or other accounting period shall file with the Department a declaration within four months after the beginning of each fiscal year or other accounting period.

(b) If a taxpayer has not previously been required to file, the declaration shall be filed on or before the first date for making a quarterly payment which occurs after he or she becomes subject to the requirement to file a declaration. A taxpayer shall file a declaration for the same calendar year, fiscal year or other accounting period that has been accepted by the Federal Internal Revenue Service for Federal Income Tax purposes. A declaration by an individual or unincorporated entity is not required if the total estimated tax, less any credits applicable thereto, does not exceed one hundred dollars (\$100.00). A declaration by a corporation is not required if the total estimated tax, less any credits applicable thereto, does not exceed two hundred fifty dollars (\$250.00). A declaration by or on behalf of an estate or trust is not required. (Ord. 360. Passed 12-11-93.)

880.28 DECLARATION OF ESTIMATED TAX; PAYMENT; INSTALLMENTS; AMENDED DECLARATIONS.

(a) A taxpayer's annual return for the preceding year may be used as the basis for computing a declaration of estimated tax for the current year, or the taxpayer may use the same figures used for estimating his or her Federal Income Tax adjusted to exclude any income or deductions not taxable or permissible under this chapter.

(b) Except as otherwise provided, the estimated tax may be paid in full with the declaration or in four equal installments on or before the last day of the fourth, sixth, ninth and thirteenth months after the beginning of the taxpayer's taxable year. For tax years after the 1996 tax year and for which a City has entered into an agreement pursuant to Section 9 of Chapter 1 of the Internal Revenue Code, the estimated tax shall be paid in four equal installments on or before the fifteenth day of the fourth, sixth, ninth and thirteenth months after the beginning of the taxpayer's taxable year.

(c) An amended declaration may be filed when making a quarterly payment, and the unpaid balance shown due shall be paid in equal installments over the remaining payment dates. (Ord. 360. Passed 12-11-93.)

880.29 ANNUAL RETURNS; EXTENSIONS OF TIME; AUTHORITY OF ADMINISTRATOR.

(a) The filing of a declaration of estimated tax does not excuse the taxpayer from filing an annual return even though there is no change in the declared tax liability. An annual return shall be filed by the end of the fourth month, or for tax years after the 1996 tax year and for which the City has entered into an agreement pursuant to Section 9 of Chapter 1 of the Internal Revenue Code, filed with the Department of Treasury on or before the fifteenth day of the fourth month of the year following that for which the declaration was filed. Upon written request of a taxpayer, the Administrator or the Department may extend the time for filing the annual return for not to exceed six months. The Administrator or the Department may require a tentative return and payment of the estimated tax.

(b) A penalty or interest shall not be assessed if the return is filed and the final tax paid within the extended time and all other filing and payment requirements of this chapter are satisfied, and the estimated tax paid equals seventy percent or more of the tax shown due on the final return or seventy percent or more of the tax shown due on the taxpayer's return for the immediately preceding taxable year.

(c) A written request for extension of time for filing an annual return must be made by the date such annual return was first due under this chapter. However, where the Federal Internal Revenue Code grants an automatic extension to persons outside the United States, the Administrator shall grant a like automatic extension to the same date.

(d) Nothing in this chapter or rules and regulations provided for in Section 880.33 shall be construed to give the Administrator authority to extend the time for making quarterly returns and payments of tax withheld or for filing and making payments on declarations of estimated tax. (Ord. 360. Passed 12-11-93.)

880.30 SALE OF BUSINESS OR STOCK OF GOODS OR QUITTING BUSINESS; LIABILITY FOR TAX; ESCROW BY PURCHASER; RELEASE TO PURCHASER OF KNOWN TAX LIABILITY; FAILURE TO COMPLY WITH ESCROW REQUIREMENTS; LIABILITY OF CORPORATION OFFICERS.

(a) If a person liable for the tax imposed under this chapter sells a business or the stock of goods of a business or quits a business, the person shall make a final return to the City or the Department of Treasury within fifteen days after the date the business or stock of goods is sold or the person quits the business. The purchaser or succeeding purchasers, if any, who purchase a going or closed business or stock of goods of a going or closed business shall escrow sufficient to cover the amount of taxes, interest and penalties that may be due and unpaid until the former owner produces a receipt from the Administrator that shows that the taxes due have been paid, or a certificate that states that taxes are not due. If the owner provides a written waiver of confidentiality, the Administrator may release to a purchaser a business's known tax liability for the purposes of establishing an escrow account for the payment of taxes. If the purchaser or succeeding purchasers of a business or stock of goods of a business fail to comply with the escrow requirements of this subsection, the purchaser is personally liable for the payment of the taxes, interest and penalties accrued and unpaid by the business of the former owner. The purchaser's or succeeding purchaser's personal liability is limited to the fair market value of the business less the amount of any proceeds applied to balances due on secured interests that are superior to any lien provided for in this chapter.

(b) If a corporation that is liable for the tax imposed under this chapter fails for any reason to file the required returns or to pay the tax due, any officers of the corporation that have control or supervision of, or who are charged with the responsibility for, making the returns or payments are personally liable for the failure to file or pay. The signature of any corporate officer on a return or negotiable instrument submitted in payment of a tax is prima facie evidence of the officer's responsibility for making the returns and payments. The dissolution of a corporation does not discharge an officer's liability for a prior failure of the corporation to make a return or remit a tax due. The sum due for a liability may be assessed and collected under this chapter. (Ord. 360. Passed 12-11-93.)

880.31 CREDIT FOR TAX PAID ANOTHER MUNICIPALITY.

An individual who is a resident of the City and received net profits from a business, profession or rental of real or tangible personal property, gains from the sale or exchange of real or tangible personal property, or salaries, wages, commissions or other compensation for work done or services performed or rendered, in each case outside the City, and is subject to and has paid an income tax on this income to another municipality, shall be allowed a credit against the City income tax for the amount paid to the other municipality. The credit shall not exceed the amount of taxes which would be assessed under this chapter on the same amount of income of a non-resident. (Ord. 360. Passed 12-11-93.)

880.32 FRACTIONAL PART OF A CENT.

In withholding the tax due under this chapter, a fractional part of a cent shall be disregarded unless it amounts to one half-cent (\$.05) or more, in which case it shall be increased to one cent (1¢). For tax years after the 1996 tax year in paying the tax due under this chapter, if any amount other than a whole dollar amount is used, the Administrator or the Department of Treasury shall disregard the fractional part of the dollar unless the fractional part amounts to one-half dollar (\$0.50) or more, in which case the amount shall be increased by one dollar (\$1.00). (Ord. 360. Passed 12-11-93.)

880.33 RULES AND REGULATIONS; ENFORCEMENT; FORMS; COLLECTION OF TAX.

(a) The Administrator may adopt, amend and repeal rules and regulations relating to the administration and enforcement of this chapter subject to the approval of Council. The rules and regulations, amendments and repeals, after approval by the Council, shall become effective upon being published in the official newspaper of the City.

(b) The Administrator shall enforce this chapter and the rules and regulations approved as provided in subsection (a) hereof. The Administrator or the Department of Treasury shall prepare, adopt and make available to taxpayers, employers and other persons all forms necessary for compliance with this chapter.

(c) For tax years before the 1997 tax year and for tax years after the 1996 tax year and for which a City has not entered into an agreement pursuant to Section 9 of Chapter 1 of the Internal Revenue Code. The City Treasurer shall collect all taxes and payments due under this chapter and deposit them in a designated City depository. For tax years after the 1996 tax year and for which a city has entered into an agreement pursuant to Section 9 of Chapter 1 of the Internal Revenue Code, the Department shall collect taxes and payments due under this chapter and deposit them in the City Income Tax Trust Fund established in Section 5 of Chapter 1 of the Internal Revenue Code. (Ord. 360. Passed 12-11-93.)

880.34 SPECIAL RULING; APPEAL TO INCOME TAX BOARD OF REVIEW.

A taxpayer or employer desiring a special ruling on a matter pertaining to this chapter or rules and regulations established hereto shall submit in writing to the Administrator all the facts involved and the ruling sought. A taxpayer or employer aggrieved by a special ruling may appeal the special ruling in writing to the Income Tax Board of Review within thirty days. (Ord. 360. Passed 12-11-93.)

880.35 FAILURE OR REFUSAL TO MAKE RETURN OR PAYMENT; INSUFFICIENT INFORMATION ON RETURN; EXAMINATION OF BOOKS, RECORDS AND WITNESSES.

(a) If a taxpayer or employer fails or refuses to make a return or payment as required, in whole or in part, or if the Administrator or the Department of Treasury has reason to believe that a return made does not supply sufficient information for an accurate determination of the amount of tax due, the Administrator or the Department may examine the books, papers and records of any person, employer, taxpayer or agent or representative of any person, employer or taxpayer, or audit the accounts of any person, employer or taxpayer or any other records pertaining to the tax, to verify the accuracy and completeness of a return filed, or if no return was filed, to ascertain the tax, withholding, penalties, or interest due under this chapter.

(b) The Administrator or the Department may examine any person, under oath, concerning income which was or should have been reported for taxation under this chapter, and for this purpose may compel the production of books, papers and records and the attendance of all parties before him or her whether as parties or witnesses, if he or she believes those persons have knowledge of the income. In addition, for tax years after the 1996 tax year and for which a City has entered into an agreement with the Department of Treasury pursuant to Section 9 of Chapter 1 of the Internal Revenue Code, all of the following apply to implement this section:

- (1) The Department shall send to the taxpayer or employer a letter of inquiry stating, in a courteous and unthreatening manner, the Department's opinion that the taxpayer or employer needs to furnish further information or owes taxes to the City, and the reason for that opinion. A letter of inquiry shall also explain the procedure by which the taxpayer or employer may initiate communication with the Department to resolve any dispute. A letter of inquiry may be served on the taxpayer in any manner determined appropriate by the Department. This paragraph does not apply in any of the following circumstances:
 - A. The taxpayer or employer files a return that shows a tax due and fails to pay that tax.
 - B. The deficiency resulted from an audit of the taxpayer's or employer's books and records by the City or the Department
 - C. The taxpayer or employer otherwise affirmatively admits that a tax is due and owing.
- (2) If the dispute is not resolved within thirty days after the Department sends the taxpayer or employer a letter of inquiry, or if a letter of inquiry is not required under paragraph (b)(1) hereof, the Department, after determining the amount of tax due from a taxpayer or employer, shall give notice to the taxpayer or employer of the Department's notice of intent to assess the tax. The notice shall include all of the following:
 - A. The amount of the tax the Department claims the taxpayer or employer owes.
 - B. The reason for the deficiency.
 - C. A statement advising the taxpayer or employer of his or her right to file a protest and to a hearing with the Department.

(c) A taxpayer or employer has thirty days after receipt of a notice of intent to assess within which to file a written protest with the Department. If a written protest is received, the Department shall give the taxpayer or employer or duly authorized representative of the taxpayer or employer an opportunity to be heard and present evidence and arguments in his or her behalf.

(d) If a protest to the notice of intent to assess the tax under subsection (b) hereof is determined by the Department to be a frivolous protest or a desire by the taxpayer or employer to delay or impede the administration of the tax under this chapter, a penalty of twenty-five (\$25.00) or twenty-five percent of the amount of tax under protest, whichever is greater, shall be added to the tax. (Ord. 360. Passed 12-11-93.)

880.36 CONFIDENTIAL INFORMATION; DIVULGENCE; DISCHARGE FROM EMPLOYMENT.

(a) Information gained by the Administrator, City Treasurer or any other City official, agent or employee as a result of a return, investigation, hearing or verification required or authorized by this chapter is confidential, except for official purposes in connection with the administration of this chapter and except in accordance with a proper judicial order.

(b) No person shall divulge confidential information, except for official purposes. In addition to the penalty provided for in Section 880.99, an employee of the City who divulges confidential information is subject to discharge for misconduct.
(Ord. 360. Passed 12-11-93.)

880.37 UNPAID TAXES; INTEREST; PENALTY FOR DELAY; WAIVER OF PENALTY FOR REASONABLE CAUSE.

(a) All taxes imposed in a taxable year before the 1992 taxable year on a taxpayer and money withheld by an employer under this chapter and remaining unpaid after the taxes or money withheld are due bear interest from the due date at the rate of one-half of one percent per month until paid. For the 1992 taxable year and each subsequent taxable year before the 1997 taxable year, all taxes imposed on a taxpayer and money withheld by an employer under this chapter and remaining unpaid after the taxes or money withheld are due bear interest from the due date at the current monthly rate of one percentage point above the adjusted prime rate per annum per month until the tax or money is paid. For taxable years after the 1996 taxable year, if the amount of a tax paid is less than the amount that should have been paid, or an excessive claim for credit has been made, the deficiency and interest on the deficiency at the current monthly interest rate of one percentage point above the adjusted prime rate per annum from the time the tax was due and until paid are due and payable after a final assessment as provided in Section 880.40. A deficiency in an estimated payment required by this chapter shall be treated in the same manner as a tax due and is subject to the same current monthly interest rate of one percentage point above the adjusted prime rate per annum from the time the payment was due until paid. As used in this section, "adjusted prime rate" means the average predominant prime rate quoted by not less than three commercial banks to large businesses, as determined by the Department of Treasury. For tax years before the 1997 tax year the adjusted prime rate is to be based on the average prime

rate charged by not less than three commercial banks during the twelve-month period ending on September 30. One percentage point shall be added to the adjusted prime rate and the resulting sum shall be divided by twelve to establish the current monthly interest rate. The resulting current monthly interest rate based on the twelve-month period ending September 30 becomes effective on January 1 of the following year. For tax years after the 1996 tax year, "adjusted prime rate" means that term as defined in and determined under Section 23(2) of Act 122 of the Public Acts of 1941, as amended, being section 205.23 of the Michigan Compiled Laws.

(b) A person who fails to file a return, pay the tax or remit withholding when due is liable, in addition to the interest, to a penalty of one percent of the amount of the unpaid tax for each month or fraction thereof, not to exceed a total penalty of twenty-five percent of the unpaid tax. If a return is filed or remittance is paid after the time specified and it is shown to the satisfaction of the City or the Department of Treasury that the failure was due to reasonable cause and not to willful neglect, the penalty shall be waived by the Administrator of the Department. If the total interest or interest and penalty to be assessed are less than two dollars (\$2.00), the Administrator or the Department shall instead assess two dollars (\$2.00).

(c) Except as provided in subsection (d) hereof, if any part of the deficiency or an excessive claim for credit is due to negligence, but without intent to defraud, a penalty of ten dollars (\$10.00) or ten percent of the total amount of the deficiency in the tax, whichever is greater, plus interest as provided in subsection (a) hereof, shall be added. The penalty becomes due and payable after a final assessment is issued as provided in Section 880.40. If a taxpayer subject to a penalty under this subsection demonstrates to the satisfaction of the Administrator or the Department that the deficiency or excess claim for credit was due to reasonable cause, the Administrator or the Department shall waive the penalty.

(d) If any part of the deficiency or an excessive claim for credit is due to intentional disregard of this chapter, but without intent to defraud, a penalty of twenty-five (\$25.00) or twenty-five percent of the total amount of the deficiency in the tax, whichever is greater, plus interest as provided in subsection (a) hereof, shall be added. The penalty becomes due and payable after a final assessment is issued as provided in Section 880.40. If a penalty is imposed under this subsection and the taxpayer subject to the penalty successfully disputes the penalty, the Administrator or the Department shall not impose a penalty prescribed by subsection (c) hereof to the tax otherwise due.

(e) If any part of the deficiency or an excessive claim for credit is due to fraudulent intent to evade the tax imposed under this chapter, or to obtain a refund for a fraudulent claim, a penalty of one hundred percent of the deficiency, plus interest as provided in subsection (a) hereof, shall be added. The penalty becomes due and payable after a final assessment is issued as provided in Section 880.40. (Ord. 360. Passed 12-11-93.)

880.38 ADDITIONAL TAX ASSESSMENT; WHEN INTEREST AND PENALTY NOT IMPOSED.

(a) Interest or a penalty shall not be imposed on an additional tax assessment if, within ninety days from final determination of a Federal tax liability which also affects the computation of the taxpayer's City income tax liability, the taxpayer prepares and files an amended City income tax return, showing income subject to the City tax based upon the final determination of Federal Income Tax liability, and pays the additional tax shown due thereon or makes a claim for refund of an overpayment. Interest shall not be allowed on a refund of the City income tax resulting from a final determination of Federal tax liability.

(b) Interest and a penalty shall not be imposed for underestimating the tax if the total amount of tax withheld and paid by declaration equals at least seventy percent or more of the tax shown due on the final return or seventy percent or more of the tax shown on the taxpayer's return for the preceding taxable year.

(c) An employee shall not be penalized because of the failure of his or her employer to report or pay tax withheld from the employee when the employer has in fact withheld the proper amount of tax. (Ord. 360. Passed 12-11-93.)

880.39 DUE AND UNPAID ASSESSMENT; PROTEST PROCEDURE.

(a) For tax years before the 1997 tax year and for tax years after the 1996 tax year for which a city has not entered into an agreement pursuant to Section 9 of Chapter 1 of the Internal Revenue Code, if the Administrator determines that a taxpayer or an employer subject to the provisions of this chapter has failed to pay the full amount of the tax due or tax withheld, he or she shall issue a proposed assessment showing the amount due and unpaid, together with interest and penalties that may have accrued thereon. The proposed assessment shall be served upon the taxpayer or employer in person or by mailing registered or certified mail to the last known address of the taxpayer or employer. Proof of mailing the proposed assessment is prima facie evidence of a receipt of the proposed assessment by the addressee.

(b) A taxpayer or employer has thirty days after receipt of a proposed assessment within which to file a written protest with the Administrator, or thirty days after receipt of a notice of intent to assess from the Department, the Administrator or the Department to file a written protest with the Department, the Administrator or the Department, shall then give the taxpayer or employer or his or her duly authorized representative an opportunity to be heard and present evidence and arguments in his or her behalf. (Ord. 360. Passed 12-11-93.)

880.40 FINAL ASSESSMENT; DETERMINATION OF RECEIPT.

(a) After the hearing as provided for in Section 880.39, the Administrator or the Department of Treasury shall issue a final assessment setting forth the total amount found due in the proposed assessment or notice of intent to assess and any adjustment the Administrator or the Department may have made as a result of the protest. The final assessment shall be served in the same manner as a proposed assessment or notice of intent to assess. Proof of mailing of the final assessment is prima facie evidence of a receipt thereof by the addressee.

(b) If a protest under Section 880.35(c) or 880.39(b) is not filed with respect to a proposed assessment or notice of intent to assess, a taxpayer or employer is deemed to have received a final assessment thirty days after receipt of the proposed assessment. (Ord. 360. Passed 12-11-93.)

880.41 FAILURE TO PAY TAX; DEMAND; RECOVERY; PROSECUTION.

If an employer or taxpayer files a return showing the amount of tax or withholding due the City, or the Department of Treasury, but fails to pay the amount to the City or the Department, the Administrator or the Department is not required to issue a proposed assessment, notice of intent to assess or a final assessment. The Administrator or the Department shall issue a ten-day demand for payment, and if no payment or satisfactory evidence of payment is made in the ten days, the Administrator or the Department may recover the tax with interest and penalties in the name of the City in any court of competent jurisdiction as other debts are recoverable, or prosecute for a violation of this chapter under Section 880.99, or both. (Ord. 360. Passed 12-11-93.)

880.42 JEOPARDY ASSESSMENT; PROCEDURE.

(a) If the Administrator or the Department of Treasury believes that collection of the tax withheld from an employee's compensation as imposed under this chapter will be jeopardized by delay, the Administrator or Department, whether or not the time otherwise prescribed by this chapter for making the return and paying the tax has expired, shall immediately assess the tax and interest and additions provided by this chapter. The tax, interest and additions shall become immediately due and payable, and the Administrator or the Department shall make an immediate notice and demand for payment, notwithstanding when the withheld tax is otherwise due and payable.

(b) If the Administrator or the Department finds that a person liable for the tax administered under this chapter intends quickly to depart from the City or to remove property from the City, to conceal the person or the person's property in the City or to do any other act tending to render wholly or partly ineffectual proceedings to collect the tax unless proceedings are brought without delay, the Administrator or the Department shall give notice of the findings to the person together with a demand for an immediate return and immediate payment of the tax. A warrant or warrant-notice of levy may issue immediately upon issuance of a jeopardy assessment. When the warrant or warrant-notice is issued, the tax shall become immediately due and payable. If the person is not in default in making a return or paying a tax prescribed by this chapter, and furnishes evidence satisfactory to the Administrator or the Department that the return will be filed and the tax to which the finding relates will be paid, then the tax shall not be payable before the time otherwise fixed for payment. (Ord. 360. Passed 12-11-93.)

880.43 STATUTE OF LIMITATIONS; WAIVER; PAYMENT OF TAX.

(a) Except in case of fraud, failure to file a return, failure to comply with the withholding provisions of this chapter or omission of substantial portions of income subject to the tax, an additional assessment shall not be made after four years from the date the return was due, including extensions thereof, or the tax was paid, whichever is later. An omission of more than twenty-five percent of gross income is considered a substantial omission of income. Under this section a declaration of estimated tax is not considered a return.

(b) If the Federal Internal Revenue Service and a taxpayer execute a waiver of the Federal statute of limitations, as to a taxable year. The expiration of the period within which an additional assessment may be made by the Administrator or the Department of Treasury, or a claim for refund filed by the taxpayer, for such taxable year, for City income tax purposes, shall be six months from the date of expiration of the waiver. (Ord. 360. Passed 12-11-93.)

880.44 STATUTE OF LIMITATIONS FOR REFUND.

(a) Except as otherwise provided in this chapter, a tax erroneously paid shall not be refunded unless a claim for refund is made within four years from the date the payment was made or the original final return was due, including extensions thereof, whichever is later, unless the Administrator or Department of Treasury and the taxpayer mutually agree to extend the time for assessment or refund. Under this section a declaration of estimated tax is not considered a return. Upon denial of a refund a taxpayer may follow the same procedure of appeal as provided in the case of a deficiency assessment.

(b) A tax deficiency as finally determined and interest or penalties thereon shall be paid within thirty days after receipt of a final assessment if no appeal is made.
(Ord. 360. Passed 12-11-93.)

880.45 INCOME TAX BOARD OF REVIEW; APPOINTMENTS; OFFICERS; RULES OF PROCEDURE; QUORUM; CONFLICT OF INTERESTS; RECORD OF TRANSACTIONS AND PROCEEDINGS; CONDUCT OF BUSINESS AT PUBLIC HEARING; NOTICE OF HEARING.

(a) The governing body of the City shall appoint an Income Tax Board of Review consisting of residents of the City who are not City officials or City employees.

(b) The Board shall select a Chairperson, Secretary and other officers as the Board considers necessary and shall adopt rules governing the procedure for hearings and other procedures. The rules shall be filed in the office of the City Clerk and shall be available for inspection by any interested person. A copy of the rules shall be furnished on request to any interested person.

(c) A majority of the Board members shall constitute a quorum for any action by or hearing before the Board, or for any other purpose. A member of the Board shall not act on a matter in which he or she has a financial interest other than the common public interest. A record shall be kept of the Board's transactions and proceedings. The record and any other writing prepared, owned, used in the possession of or retained by the Board in the performance of an official function shall be made available to the public in compliance with Act 442 of the Public Acts of 1976, as amended.

(d) The business which the Board may perform shall be conducted at a public hearing of the Board held in compliance with Act 267 of the Public Acts of 1976, as amended, being Sections 15.261 to 15.275 of the Michigan Compiled Laws. Public notice of the time, date and place of the hearing shall be given in the manner required by Act 267 of the Public Acts of 1976, as amended. (Ord. 360. Passed 12-11-93.)

880.46 NOTICE OF APPEAL; HEARING; CONFIDENTIALITY; PAYMENT OF DEFICIENCY OR REFUND.

(a) A taxpayer or employer may file a written notice of appeal with the Secretary of the Income Tax Board of Review not more than thirty days after receipt of a final assessment, denial in whole or in part of a claim for refund, decision, order or special ruling of the Administrator or the Department of Treasury. Upon receipt of the notice of appeal, the Board shall notify the Administrator or the Department who or which shall forward within fifteen days, to the Board, a certified transcript of all actions and findings taken by the Administrator relating to the matter under appeal. The appellant or his or her duly authorized representative may inspect the transcript.

(b) The Board of Review shall grant the appellant a hearing at which the appellant or his or her duly authorized representative and the Administrator or the Department have an opportunity to present evidence relating to the matter under appeal. After conclusion of the hearing the Board, by a majority of its three members, shall affirm, reverse or modify the final assessment, denial, decision or order under appeal and furnish a copy of the decision to the appellant and to the Administrator or the Department.

(c) The provisions of this chapter as to the confidential character of tax data are applicable to proceedings pending before or submitted to the Board.

(d) A tax deficiency or refund and any interest or penalties on a deficiency or refund shall be paid within thirty days after receipt by the taxpayer or employer or by the City or the Department of notice of determination by the Board if no further appeal is made.
(Ord. 360. Passed 12-11-93.)

880.47 APPEAL TO STATE TAX COMMISSIONER OR TAX TRIBUNAL.

(a) A taxpayer, employer or other person aggrieved by a rule adopted by the Administrator may file a timely appeal to the State Commissioner of Revenue in the form and manner prescribed by the Commissioner.

(b) A taxpayer or employer aggrieved by a final assessment, denial, decision or order of the Income Tax Board of Review, other than a decision under subsection (a) hereof, may appeal the assessment, denial, decision or order to the tax tribunal not more than thirty-five days after the final assessment, denial, decision or order was issued. The uncontested portion of a final assessment, order or decision shall be paid as a prerequisite to appeal. An appeal under this subsection shall be perfected as provided under the Tax Tribunal Act, Act 186 of the Public Acts of 1973, as amended, being Sections 205.701 to 205.779 of the Michigan Compiled Laws, and rules promulgated under that Act for the tax tribunal.

(c) Not more than thirty-five days after a final order of the tax tribunal, the taxpayer, employer or other person shall pay the City the taxes, interest and penalty found due to the City or the Department, and the City or the Department shall refund to the taxpayer, employer or other person any amount found to have been overpaid by the taxpayer, employer, or other person. (Ord. 360. Passed 12-11-93.)

**880.48 APPEAL TO COURT OF APPEALS OR SUPREME COURT;
PROCEDURE.**

(a) If a taxpayer, employer or other person or the City or the Department of Treasury is aggrieved by a decision of the tax tribunal, the aggrieved party may take an appeal by right from a decision of the tax tribunal to the Court of Appeals. The appeal shall be taken on the record made before the tax tribunal. The taxpayer, employer or other person or the City or Department may take further appeal to the Supreme Court in accordance with the court rules provided for appeals to the Supreme Court.

(b) An assessment is final, conclusive and not subject to further challenge after ninety days after the issuance of the final assessment, decision or order of the Administrator or the Department, and a person is not entitled to a refund of any tax, interest or penalty paid pursuant to an assessment unless the aggrieved person has appealed the assessment in the manner provided by this chapter. (Ord. 360. Passed 12-11-93.)

**880.49 PAYMENT TO TAXPAYER FROM GENERAL FUND OR CITY
INCOME TAX TRUST FUND.**

For tax years before the 1997 tax year and for tax years after the 1996 tax year and for which a city has not entered into an agreement pursuant to Section 9 of Chapter 1 of the Internal Revenue Code, if a taxpayer is found by a decision on an appeal to recover any sum paid, and further appeal has not been taken within the time permitted, the sum shall be paid from the General Fund of the City. For tax years after the 1996 tax year and for which a city has entered into an agreement pursuant to Section 9 of Chapter 1, if a taxpayer is found by a decision on an appeal to be entitled to recover any sum paid, and further appeal has not been taken within the time permitted the sum shall be paid from the City Income Tax Trust Fund established in Section 5 of Chapter 1. (Ord. 360. Passed 12-11-93.)

880.50 VIOLATIONS.

Each of the following violations of this chapter is a misdemeanor and, in addition to the interest and penalties provided for in this chapter, shall be subject to the penalty provided for in Section 880.99:

- (a) Willful failure, neglect or refusal to file a return required by this chapter.
- (b) Willful failure, neglect or refusal to pay the tax, penalty or interest imposed by this chapter.
- (c) Willful failure of an employer or person to withhold or pay to the City a tax as required by this chapter.
- (d) Refusal to permit the City or an agent or employee appointed by the Administrator, in writing, to examine the books, records and papers of a person subject to this chapter.
- (e) Knowingly filing an incomplete, false or fraudulent return.
- (f) Attempting to do or doing anything whatever in order to avoid full disclosure of the amount of income or to avoid the payment of any or all of the tax imposed by this chapter. (Ord. 360. Passed 12-11-93.)

880.99 PENALTY.

(EDITOR'S NOTE: See Section 202.99 of these Codified Ordinances for the general Code penalty if no specific penalty is provided.)